U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33167668

Date: AUG. 21, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a professor of chemistry, seeks to classify himself as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further determined that the record does not satisfy, in the alternative, at least three of the 10 criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, although the Director concluded the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the Director found that the record does not satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(v), noting that the record does not address criteria other than those at 8 C.F.R. § 204.5(h)(3)(iv)-(vi).

On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(v), in addition to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi). The Petitioner does not assert on appeal that the record satisfies criteria other than those at 8 C.F.R. § 204.5(h)(3)(iv)-(vi), thereby waiving these criteria. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)). Additionally, the Petitioner does not assert on appeal that the standards at 8 C.F.R. § 204.5(h)(3) do not readily apply to the occupation. *See* 8 C.F.R. § 204.5(h)(4).

We adopt and affirm the Director's analysis of the criterion at 8 C.F.R. § 204.5(h)(3)(v), which addresses the Petitioner's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). On appeal, the Petitioner generally repeats his prior assertions regarding the criterion. However, the Director provided a detailed analysis of evidence submitted for the criterion and discussed how the evidence did not sufficiently demonstrate that the Petitioner met the criterion, reaching the correct conclusion.

For example, the Director explained that the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(v) contemplates extant evidence of contributions in the field, not speculation of the potential for significance in the future. The Director further distinguished moderate significance from the "major significance" contemplated by the criterion. As another example, the Director discussed why citation data regarding the Petitioner's published articles—both individually and in the aggregate—does not indicate major significance in the field, as compared to other researchers. The Director also addressed the Petitioner's presentations at conferences, noting that the record does not establish how those presentations demonstrate major significance to the field. Likewise, the Director acknowledged letters submitted on behalf of the Petitioner; however, the Director noted that the assertions therein were speculative, unsubstantiated, or otherwise unpersuasive. The Director also observed that the record establishes the Petitioner developed or designed an innovation used in Iran, but the record does not establish that the innovation is of major significance to the field in general, beyond merely being used in Iran. The Director's five-page discussion adequately distinguished evidence of the Petitioner's contributions of moderate significance to the field from evidence of contributions of major significance to the field, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(v).

In summation, the Petitioner has not established he received a one-time achievement or, in the alternative, provided sufficient evidence that meets at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015). Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.